

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA

v.

PAUL J. MANAFORT, JR.,

Defendant.

Crim. No. 1:18-cr-83 (TSE)

**GOVERNMENT’S TRIAL BRIEF REGARDING ABILITY OF GOVERNMENT
WITNESSES TO READ FROM AUTHENTICATED EMAILS BY THE DEFENDANT**

The United States of America, by and through Special Counsel Robert S. Mueller, III, hereby files this trial brief regarding the ability of government witnesses from the FBI to read from emails from defendant Paul J. Manafort, Jr. (“Manafort”) during their testimony. The emails have been authenticated by stipulation, and, because they represent Manafort’s statements, are not hearsay. *See* Gov’t Exhibit 448 (“[A]ll emails introduced at trial . . . are authentic and no further testimony is necessary to establish their authenticity.”); Fed. R. Evid. 801(d)(2)(A) (“statement [] offered against an opposing party [that] . . . was made by the party in an individual . . . capacity,” is not hearsay). The government witnesses from the FBI are permitted to read the emails because the emails are admissible and they have personal knowledge of the investigation and discovery of the emails.

A. Background

The government may present the testimony of FBI Forensic Accountants Morgan Magionos and Renee Michael. Both accountants have extensive experience with the investigation of Manafort, and have reviewed and analyzed thousands of documents, financial records, and

emails in this case. The government intends to ask one or both of them to read from emails sent by Manafort.

B. Discussion

Because Manafort's emails have been authenticated by stipulation and are admissible, there is no bar to government witnesses from the FBI reading from them in connection with their testimony about the investigation. If called to testify, the FBI forensic accountants will testify as fact witnesses based on their first-hand knowledge and perceptions from their involvement in the investigation. The requirement of personal knowledge in Fed. R. Evid. 602 is satisfied by the FBI forensic accountants' personal knowledge of the investigation and the discovery of the emails; because of the authentication stipulation, they need not have personal knowledge of the circumstances surrounding the creation of the email. There is no prohibition in the evidentiary rules or the case law on an investigator reading from documents created by others. *See United States v. Kilpatrick*, 798 F.3d 365, 383 (6th Cir. 2015) ("agents are free to read aloud from admitted documents"); *United States v. Simpson*, 741 F.3d 539, 554-55 (5th Cir. 2014) (agent read into the record an email defendant wrote to a loan officer).

CONCLUSION

For the foregoing reasons, the government requests that the Court permit government witnesses from the FBI to read from emails from Manafort during their testimony.

Respectfully submitted,

ROBERT S. MUELLER, III
Special Counsel

Dated: August 6, 2018

Uzo Asonye
Assistant United States Attorney
Eastern District of Virginia

/s/_____

Greg D. Andres
Brandon L. Van Grack
Special Counsel's Office
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530
Telephone: (202) 616-0800
Attorneys for United States of America

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 2018, I will cause to be filed electronically the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Thomas E. Zehnle (VA Bar No. 27755)
Law Office of Thomas E. Zehnle
601 New Jersey Avenue, N.W., Suite 620
Washington, D.C. 20001
tezehnle@gmail.com

Jay R. Nanavati (VA Bar No. 44391)
Kostelanetz & Fink LLP
601 New Jersey Avenue, N.W., Suite 620
Washington, D.C. 20001
jnanavati@kflaw.com

_____/s/_____
Brandon L. Van Grack
Special Counsel's Office
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530
Telephone: (202) 616-0800

Attorney for the United States of America